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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 HENRY ROBINSON COLOP SALANIC,

9 Petitioner,

10 v.

11 JEFFERSON B. SESSIONS, et al.,

12 Respondents.

CASE NO. C17-809-RSL-BAT

**REPORT AND
RECOMMENDATION**

13 Henry Robinson Colop Salanic, a Guatemalan citizen, initiated this 28 U.S.C. § 2241
14 habeas action to obtain release on bond from immigration detention. The Government has
15 moved to dismiss. Dkt. 4. Mr. Colop did not file a response. As discussed below, the Court
16 recommends that the Government's motion to dismiss be **GRANTED**, Mr. Colop's habeas
17 petition be **DENIED** as moot, and this action be **DISMISSED** without prejudice.

18 **BACKGROUND**

19 Mr. Colop entered the United States in June 2011. Dkt. 1 at 5. On March 17, 2017, he
20 was arrested by U.S. Immigration and Customs Enforcement ("ICE") and placed in removal
21 proceedings under charges of being a non-citizen who was not admitted or paroled into the
22 country. See Dkts. 5-4, 5-5, 5-6. ICE made the initial custody determination to hold him without
23 bond. Dkt. 5-7. Mr. Colop requested a bond redetermination hearing before an Immigration

1 Judge (“IJ”), and on April 4, 2017, the IJ determined he was a flight risk and denied bond. Dkts.
2 5-8, 5-9, 5-12. On April 6, 2017, Mr. Colop appealed the IJ’s bond determination to the Board
3 of Immigration Appeals (“BIA”). Dkt. 5-10.

4 On May 24, 2017, while his BIA bond appeal was still pending, Mr. Colop initiated the
5 instant habeas action, seeking release on bond because the IJ abused his discretion and violated
6 Mr. Colop’s due process rights. Dkt. 1. After the petition was served, the Government moved to
7 dismiss, arguing that Mr. Colop is lawfully detained and failed to exhaust his administrative
8 remedies by filing this action before the BIA ruled on his bond appeal. Dkt. 4.

9 On July 26, 2017, the BIA remanded Mr. Colop’s case to the IJ to set a reasonable bond.
10 Dkt. 7-1. Mr. Colop’s bond hearing is scheduled for August 11, 2017, the same day as the merits
11 hearing for his removal action. Dkt. 7 at 2.

12 DISCUSSION

13 ICE has the statutory authority to detain Mr. Colop during his removal proceedings or to
14 release him on bond or conditional parole. 8 U.S.C. § 1226; *see also Demore v. Kim*, 538 U.S.
15 510, 530 (2003) (“Detention during removal proceedings is a constitutionally permissible part of
16 that process.”). If an IJ denies bond, a detainee may appeal to the BIA. 8 C.F.R. § 236.1(d)(3).
17 After the BIA issues a decision, the detainee may seek habeas relief from the district court.
18 *Leonard v. Crawford*, 646 F.3d 1157, 1159-61 (9th Cir. 2011) (proper procedure to challenge
19 IJ’s bond determination is to appeal to the BIA, wait for the BIA to render its decision, and then
20 file a habeas petition in the district court); *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir.
21 2011) (administrative exhaustion of immigration bond determinations is prudential, rather than
22 jurisdictional); *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (prudential exhaustion
23 requirements may be waived).

1 At the time Mr. Colop initiated this lawsuit, the BIA had not yet ruled on his bond appeal,
2 and therefore he had not exhausted his administrative remedies. *See Leonard*, 646 F.3d at 1159-
3 61. The BIA subsequently remanded to the IJ to set a reasonable bond.¹ Thus, petitioner has
4 received the relief he requests here—release on a reasonable bond—and his habeas petition
5 should be dismissed as moot. *See Abdala v. I.N.S.*, 488 F.3d 1061, 1065 (9th Cir. 2007) (claims
6 are moot where court cannot provided the requested relief); *Flores-Torres v. Mukasey*, 548 F.3d
7 708, 710 (9th Cir. 2008) (dismissing as moot portion of habeas petition challenging detention
8 without bond upon grant of bond hearing).

9 CONCLUSION AND RIGHT TO OBJECT

10 The Court recommends that the Government’s motion to dismiss, Dkt. 4, be **GRANTED**,
11 Mr. Colop’s habeas petition be **DENIED** as moot, and this action be **DISMISSED** without
12 prejudice. A proposed Order accompanies this Report and Recommendation.

13 This Report and Recommendation is not an appealable order. Therefore a notice of
14 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
15 assigned District Judge enters a judgment in the case. Objections, however, may be filed and
16 served upon all parties no later than **August 23, 2017**. The Clerk should note the matter for
17 **August 25, 2017**, as ready for the District Judge’s consideration if no objection is filed. If
18 objections are filed, any response is due within 14 days after being served with the objections. A
19 party filing an objection must note the matter for the Court’s consideration 14 days from the date
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21 ¹ The reasonableness of the amount of a bond is not subject to judicial review. *See* 8 U.S.C. § 1226(e) (“[N]o court
22 may set aside any action or decision by the Attorney General under this section regarding the detention or release of
any [non-citizen] or the grant, revocation, or denial of bond or parole.”); *Prieto-Romero v. Clark*, 534 F.3d 1053,
1067 (9th Cir. 2008) (finding no jurisdiction to review the reasonableness of a \$15,000 bond alleged to be too
expensive for the petitioner to afford); *Aurel v. ICE Field Office Director*, No. 13-cv-627-RSM, 2013 WL 5786146,
23 at *2 (W.D. Wash. Oct. 28, 2013) (“[T]he Court is not permitted to review the determined bond amount for
reasonableness.”); *Karanja v. Clark*, No. C08-1351-TSZ-BAT, 2009 WL 86489 (W.D. Wash. Jan. 12, 2009)
(concluding that the court was not entitled to review the petitioner’s allegedly excessive \$20,000 bond).

1 the objection is filed and served. The matter will then be ready for the Court's consideration on
2 the date the response is due. Objections and responses shall not exceed eight pages. The failure
3 to timely object may affect the right to appeal.

4 DATED this 9th day of August, 2017.

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7 BRIAN A. TSUCHIDA
8 United States Magistrate Judge
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